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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/588,651

08/07/2006

Georg Geywitz

PNL21550

9253

77407

7590

11/26/2008

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EXAMINER

LEWIS, TISHA D

ART UNIT

PAPER NUMBER

3655

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/588,651	<b>Applicant(s)</b> GEYWITZ ET AL.	
	<b>Examiner</b> TISHA D. LEWIS	<b>Art Unit</b> 3655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 8-14 is/are rejected.
- 7) ☒ Claim(s) 4-7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

### **DETAILED ACTION**

The following is a first action on the merits of application serial no. 10/588651 filed on August 7, 2006.

#### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

#### ***Information Disclosure Statement***

The information disclosure statement filed on August 7, 2006 has been considered.

#### ***Specification***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because the legal phrase "said" in line 3 should be deleted. Correction is required. See MPEP § 608.01(b).

The disclosure is objected to because of the following informalities: the headings introducing each section of the specification should be inserted, i.e., Background of the

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Invention, Summary of the Invention, Description of Drawings, etc.. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 1, the limitation sentence "wherein when at least one approval criterion for the engine torque which is dependent on the driving state of the vehicle a default engine torque ....." is unclear, seems to be a grammar error, please clarify.

Claim 1 recites the limitation "the setpoint" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the accelerator" in line 4. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the engine torque" in lines 2 to 3. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Hess et al 6000376. As to claim 1, Hess et al discloses an engine torque control system wherein when at least one approval criteria for engine torque which is dependent on driving state of the vehicle is met (Miact corresponds to engine torque and operating variables sent to ECU 10 correspond to criteria), a default engine torque (Mi-des-L or Mi-des) is stipulated (from 104), the default torque can be reduced relative to a setpoint torque (Mi-ped) required by the position of an accelerator (beta) of the vehicle (column 3, lines 55-58 suggest that if the driver changes pedal position, then the values assume different values which suggest that the default torques Mi-des can be reduced or increased according to pedal position) and the default torque is determined as a function of at least one engine characteristic (via 32 or 34). As to claim 8, Hess discloses the default torque being determined by applying a torque factor (Mi-far) to the setpoint torque (Hess discloses that Mi-ped is interpolated into multiple torques Min, Max to come up with Mi-far). As to claim 9, Hess discloses that the factor is determined from a characteristic map (the block 102 should disclose a table or map for storing the min, max values to come up with the factor. As to claim 10, Hess discloses the default torque deviating from the setpoint torque to initiate a throttle valve (Hess discloses that when the driver changes pedal position, torque values are changed and throttle flap is controlled).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 3, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hess in view of Yoshida et al 5078109. Hess discloses that the approval criteria (operating variables) can have a vehicle variable (column 1, lines 53-55), but doesn't disclose that it is a driving speed.

Yoshida discloses an engine torque control wherein a target engine torque is determined according to a vehicle speed threshold which are the ranges disclosed in Figure 11 from 0 to 80 km/h, encompasses 25 to 40 and 35 km/h.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Hess with a vehicle speed criteria in view of Yoshida for engine torque control to obtain a desired vehicle speed, acceleration, etc.

As to claim 3, Hess discloses the default torque stipulated after a start up process of the vehicle depending on at least one engine characteristic (claim 3 discloses Mi-des used at operating state which can be a start phase).

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hess in view of Mabuchi et al 6742498. Hess discloses a default engine torque, but does not disclose it being used for influencing engine noise.

Mabuchi et al discloses control of engine torque by setting a target torque to eliminate engine speed noise during idling.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Hess with an engine noise control using engine torque control in view of Mabuchi et al to eliminate engine noise during idling.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hess in view of Graf 6507780. Hess discloses an engine torque control, but doesn't disclose that it is used to avoid damage to clutch during starting.

Graf discloses that engine torque control can reduce clutch wear (via Figure 3).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Hess with engine torque control to reduce clutch damage in view of Graf to reduce clutch wear.

### ***Allowable Subject Matter***

Claims 4-7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TISHA D. LEWIS whose telephone number is 571-272-7093. The examiner can normally be reached on M-F 9:30AM TO 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CHARLES A. MARMOR can be reached on 571-272-7095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tdl  
/TISHA D. LEWIS/  
Primary Examiner, Art Unit 3655  
November 23, 2008